**TAN SRI DATO' PADUKA (DR) TING PEK KHING**

**v.**

**HII CHANG PEE**

HIGH COURT SABAH AND SARAWAK, MIRI
HASAN LAH JC
[SUIT NO: 22-43-98 (MR)]
4 MAY 2000

***CIVIL PROCEDURE:*** *Pleadings - Striking out defence and counterclaim (part of) - Libel action - Whether words complained of imputed a specific charge of dishonesty - Whether defence should be confined to specific charge of dishonesty - Whether words complained of capable of bearing a general charge of dishonesty - Whether relevant paragraphs should be struck out - Rules of the High Court 1980, O. 18 r. 19*

The plaintiff commenced this action against the defendant in respect of a libel contained in a police report and in a press release which was circulated to various newspapers and republished. In that police report and press release, the defendant accused the plaintiff of dishonestly misappropriating the sum of RM200,000 for himself which the defendant had given to him to pass on as a donation to a mosque.

In his original statement of defence, the defendant pleaded matters relating to the non-repayment of advances received by the plaintiff from the defendant and the extortionate conduct by the plaintiff in connection with the sale of timber logs from the plaintiff's company to the defendant's company. The plaintiff then applied to re-amend the amended writ of summons and statement of claim to remove the wider meaning therein and to subsequently strike out the irrelevant paragraphs thereto. That was allowed by the court. The re-amended writ of summons and statement of claim was then served on the defendant. The plaintiff alleged that despite that, the defendant in his amended defence had retained and/or included irrelevant matters under the headings "Unreturned advances" and "Extortionate conduct". The plaintiff claimed that the allegations made under the said headings had nothing to do with the supposed misappropriation of the RM200,000 donation for the mosque which was the subject matter of the police report and press release. Hence, in this instance, the plaintiff applied to strike out the relevant paragraphs of the defendant's amended defence and counterclaim pursuant to O. 18 r. 19 and/or O. 92 r. 4 of the Rules of the High Court 1980 ('RHC').

**Held:**

**[1]** If the words complained of impute a specific charge of dishonesty, then the defendant must justify that charge and was not allowed to make other allegations of specific acts of misconduct whether in mitigation of damages. If the words complained of impute a general charge, then the defendant might justify the general charge by relying on the particulars of "Unreturned advances" and "Extortionate conduct" as set out in the amended defence and counterclaim.

**[2]** The question of whether the charge first publicly made in the police report was specific or general was to be answered not by looking at the intention of the defendant when publishing those words or the manner in which the plaintiff pleaded his case but the test was what those words would have conveyed to reasonable readers.

**[3]** Only one alleged transaction was described, *ie*, the misappropriation of the defendant's RM200,000 donation for the mosque by the plaintiff. The matters related to the "Unreturned advances" and "Extortionate conduct" were not mentioned in the police report, the press release and the three newspaper reports. As rightly pointed out by the plaintiff, the words complained of conveyed a specific charge of dishonesty. There was no possibility that a reasonable reader might conclude that those words convey a general charge of dishonesty against the plaintiff. Accordingly, the defendant was not entitled to rely on general charges of wrongdoings or of any specific instance of wrongdoing which were not relevant or linked to the specific charge.

**[4]** As regards the defendant's contention that the issue relating to the "Extortionate conduct" was brought up by the plaintiff himself in his pleading and as such, the defendant should be allowed to plead the particulars relating to the "Unreturned advances" and "Extortionate conduct", this court was of the view that such an argument was devoid of merits. The statement of claim as originally pleaded attributed a variety of wide meanings to the words complained of. However, by amendment that part of the pleading was removed and the plaintiff now pleaded a narrow meaning.

**[5]** As the words complained of conveyed a specific charge, the particulars relating to the "Unreturned advances" and "Extortionate conduct" were irrelevant. They remain irrelevant notwithstanding what was pleaded by the plaintiff in his statement of claim as the scope of the defence of justification in a defamation action did not depend on the way in which the plaintiff pleaded his case but on the meanings which the words published were capable of bearing.

**[6]** The defendant was not entitled to rely on the facts and matters pleaded under the "Unreturned advances" and "Extortionate conduct" to establish that the plaintiff's conduct set out therein and the propensity they revealed gave rise to reasonable grounds for suspicion that he was guilty of dishonesty in relation to the donation of RM200,000 or that he was dishonest, unscrupulous and lacking in integrity. That was because under s. 5 of the Evidence Act 1950 those evidence were not relevant and should be excluded.

**[7]** The law concerning the exercise of powers under O. 18 r. 19 RHC is clear and settled. The pleadings will only be struck off in plain and obvious cases. So long as the pleadings disclose some ground of action, the mere fact that the party is unlikely to succeed at the trial is no ground for striking out.

**[8]** The relevant paragraphs sought to be struck off from the defendant's amended defence and counterclaim disclosed no reasonable defence to the plaintiff's claim. They were scandalous, frivolous and vexatious, calculated to prejudice, embarrass and delay the fair trial of this action. Also, an abuse of the process of court.

*[Application allowed; relevant paragraphs be struck out from defendant's amended defence and counterclaim; costs to the plaintiff.]*

**Case(s) referred to:**
*Aaron & Ors v. Cheong Yip Seng & Ors [1996] 1 SLR 623* ***(refd)***
*Atkinson v. Fitzwalter [1987] 1 WLR 201* ***(refd)***
*Bookbinder v. Tebbit [1989] I WLR 640* ***(refd)***
*Plato Films Ltd and Ors v. Speidel [1961] LR 1060* ***(refd)***
*Prager v. Times Newspaper Ltd [1988] 1 All ER 300* ***(refd)***
*Scott v. Sampson [1882] QB 491* ***(refd)***
*Tan Datuk Patinggi Haji Abdul Rahman Ya'akub v. Bre Sdn. Bhd. & Ors [1996] 1 MLJ 393* ***(refd)***
*Williams v. Reason [1988] 1 WLR 96* ***(refd)***

**Legislation referred to:**
Evidence Act 1950, s. 5
Rules of the High Court 1980, O. 18 r. 19, O. 20 r. 5, O. 92 r. 4

*For the plaintiff - Geoffrey Shaw QC (Dato' VK Lingam & Victor Wong with him); M/s Victor Wong & Chiew*
*For the defendant - Karpal Singh (Fabian Lim, Orlando Chua & Lim Heng Choo with him); M/s Lim & Lim*

*Reported by Usha Thiagarajah*

a

## JUDGMENT

**Hasan Lah JC:**

***Application***

b This is an application by the plaintiff for the striking out of certain paragraphs of the defendant's amended defence and counterclaim pursuant to O. 18 r. 19 and/or O. 92 r. 4 of the RHC 1980. The application is supported by the affidavit-in-support affirmed by the plaintiff on 2 March 2000.

c The defendant opposed the application and he filed in his affidavit-in-reply which was affirmed on 17 March 2000.

***Background***

The relevant facts for the purpose of this application may be stated as follows. The plaintiff commenced this libel suit against the defendant in respect of a d libel contained in a police report lodged by the defendant on 19 April 1998 at the Miri Central Police Station *vide* Police Report No. 4846/98 and also for the similar libel published by the defendant in a press release dated 18 April 1998 and circulated by the defendant to various newspapers which also republished the similar libel.

e

In that police report and press release the defendant had accused the plaintiff of dishonestly misappropriated the sum of RM200,000 for himself by paying a cheque for that amount, which the defendant had given him to pass on as a donation to Masjid Lingga, into his own bank account with the intention of f permanently depriving Masjid Lingga and the defendant of the proceeds and that the plaintiff was accordingly guilty of criminal breach of trust and/or the criminal offence of cheating.

In his original statement of defence dated 12 October 1998 the defendant pleaded in paras. 8.3(23) to (35) matters relating to the non-repayment of g advances received by the plaintiff from the defendant or the defendant's company, Interhill Enterprise and the extortionate conduct by the plaintiff in connection with the sale of the timber logs from the plaintiff's company, equatorial marketing, to the defendant's company, Interhill Enterprise.

On 24 December 1999 the plaintiff filed his application under O. 20 r. 5 of h the RHC 1980 for leave to re-amend the amended writ of summons and the amended statement of claim. The grounds for the amendment as stated in the summons were, *inter alia*, that to remove the wider meaning and to subsequently strike out the irrelevant paragraphs in the statement of defence.

i

On 26 January 2000 the court allowed the plaintiff's application for amendment. The re-amended writ of summons and re-amended statement of claim was served on the defendant's solicitors on 1 February 2000.

The plaintiff alleged that despite being put on notice as aforesaid the defendant in his amended defence had retained and/or included irrelevant matters under para. 8.1(c), paras. 8.2(22A)(i)(ii) and (iii), paras. 8.2(23) (a), (b), (c) and (d) under the sub-heading "unreturned advances" and paras. 8.2(24) to (35) under the sub-heading "Extortionate conduct". These are the paragraphs the plaintiff is now seeking to strike out on the grounds that:

(a) they are irrelevant and do not concern the subject matter of the plaintiff's libel action;

(b) it is a tactical maneuver by the defendant to prejudice the fair trial of the libel action;

(c) they disclose no reasonable defence to the claim, are scandalous, frivolous and vexatious, are calculated to prejudice, embarrass and delay the fair trial of this action and are an abuse of the process of court.

***The Contentions Of the Parties***

The learned counsel for the plaintiff contends that the allegations made under the headings "unreturned advances" and "extortionate conduct" in the defendant amended defence and counterclaim which form part of his defence of justification have nothing to do with the supposed misappropriation of the RM200,000 donation for Lingga mosque which was the subject of the police report and the press release as those acts were not mentioned in the police report and the press release. According to the learned counsel under the law the defendant is not allowed to introduce into a defence of justification allegations which in reality are incapable of justifying the defamatory allegation which he has published. This amounts to an illegitimate attempt to introduce into the action inadmissible evidence of unrelated acts of alleged misconduct.

The learned counsel for the plaintiff further argues that the words complained of in this action described one series of events and conclude with the assertion that on account of the series of events just described, the plaintiff is guilty of one offence of dishonesty. This, according to the learned counsel, conveys a specific defamatory imputation.

As regards sub-para. 22A to para. 8.2 of the amended defence and counterclaim the learned counsel for the plaintiff contends that it is bad as under s. 5 of the Evidence Act 1950 evidence of "disposition" are regarded as irrelevant to the question whether someone is guilty of a particular wrongful act.

It is the contention of the defendant that the words complained of in the police report, the press release and the three newspapers are capable of imputing that the plaintiff was "dishonest, unscrupulous and lacking in integrity" both in relation to the specific incident of the mosque donation and generally having regard to the following facts:

(i) the sum of RM200,000 in question was a charitable donation to a mosque;

(ii) the donation was obtained by using the name of the chief minister, which would show great unscrupulousness to use his name in this way for personal gain;

(iii) the plaintiff's conduct in the defendant's opinion may amount to criminal breach of trust and/or cheating.

As regards the particulars of "unreturned advances" the defendant contends that they concern the commercial transactions between Interhill Sdn. Bhd. and the plaintiff and are relevant to the subject matter of the police report and the press release as these transactions would show that the plaintiff is dishonest, unscrupulous and lacks in integrity.

As regards the particulars of "extortionate conduct" the defendant also contends that they are relevant to the subject matter of the police report and the press release as they would show that the plaintiff was dishonest, unscrupulous, extortionate and lacking in business integrity and would also answer the plaintiff's allegation that the defendant was actuated by malice when the words complained of were published.

In his submission the learned counsel for the defendant submits that for the plaintiff to succeed in this application the plaintiff must satisfy the court that:

(a) in relation to para. 8.1(c) of the amended defence and counterclaim, it is not arguable that the words complained of are capable of conveying that defamatory imputation concerning the plaintiff to a reasonable person reading the words complained of;

(b) in relation to the particulars pleaded under para 8.2(22A) to (35), it is not arguable that they might be held by the trial judge to be relevant and admissible on the issues whether the words complained of are substantially true in the defamatory meaning relied on by the defendant.

***The Findings Of The Court***

From what I could gather from the submissions made by the parties they are more or less in an agreement as to the relevant general principles of defamation law. If the words complained of impute a specific charge of

dishonesty, then the defendant must justify that charge and is not allowed to make other allegations of specific acts of misconduct whether in mitigation of damages (that is the rule in *Scott v. Sampson* [1882] QB 491) or "under the guise of justification" (as Lord Justice Parker put it in *Atkinson v. Fitzwalter* [1987] 1 WLR 201). If the words complained of impute a general charge, then the defendant may justify the general charge by relying on the particulars of "unreturned advances" and "extortionate conduct" set out in the amended defence and counterclaim.

In *Scott v. Sampson (supra)* the plaintiff who was a theatrical critic brought an action against the defendant, the proprietor and publisher of a weekly paper called "The Referee" for a libel alleging that the plaintiff had endeavoured to extort money by threatening to publish defamatory matter concerning a deceased actress. The fourth paragraph of the statement of defence stated that the allegations in the article were true in substance and in fact. It was held that evidence of rumours before the publication of the libel that the plaintiff had committed the offences charged in it, and evidence of particular facts and circumstances tending to show the misconduct of the plaintiff as a theatrical critic could not be admitted in reduction of damages. At p. 504 and 505 of the report Cave, J said:

> As to the third head or evidence of facts and circumstances tending to show the disposition of the Plaintiff, both principle and authority seem equally against its admission. At the most it tends to prove not that the Plaintiff has not, but that he ought not to have, a good reputation, and to admit evidence of this kind is in effect as was said in *Jones v. Stevens (1)* to throw upon the Plaintiff the difficulty of showing a uniform propriety of conduct during his whole life. It would give rise to interminable issues which would have but a very remote bearing on the question in dispute, which is to what extent the reputation which he actually possesses has been damaged by the defamatory matter complained of.

This rule was upheld by the House of Lords in *Plato Films Ltd and Ors v. Speidel* [1961] LR 1060. As far as the Malaysian courts are concerned this rule was adopted by Richard Malanjum J in *Tan Datuk Patinggi Haji Abdul Rahman Ya'akub v. Bre Sdn. Bhd. & Ors* [1996] 1 MLJ 393. At p. 406 of the report Richard Malanjum J said:

> Having read the pleadings of the plaintiff, in particular para 4 of the statement of claim, it is my finding that the Plaintiff relied on imputations couched in specific terms or specific charges of wrongdoing that could be concluded from the words complained of. And I noted that the defendants did not suggest any alternative imputations that could arise from Ex. PIA. Accordingly, it is the law that in such a situation the defendants are not entitled to rely on general charges of wrongdoings or of any specific instance of wrongdoing which are

not relevant or linked to the specific charges. The burden is, therefore, on the defendant to establish the truth of those specific charges or imputations relied upon by the plaintiff bearing in mind, of course, in this country s. 8 of the Defamation Act 1957 (see *Bookbinder v. Tebbitt* [1989] 1 All ER 1169; *Templeton v. Jones* [1984] 1 NZLR 448; *Plato Films Ltd & Ors v. Sedidel* [1961] AC 1090; *Scott v. Sampson* [1882] 8 QBD 491).

It follows in this case that, general charges or general conclusions or irrelevant specific instances of wrongdoing as submitted are therefore removed from consideration in finding whether the defendants have succeeded in establishing the defence of justification. Further, as stated earlier on in this judgment, the Defendants must establish not only the truth of the defamatory facts alleged, but also that the basic facts and the inferences arising therefrom are both true.

With the foregoing principles of law in mind, I have therefore examined whether the particulars given in the reamended defence can be the basis to justify the specific defamatory charges, meanings or imputations relied upon by the Plaintiff and not disputed by the Defendants. And it is my finding that particulars (a), (e) and (f) of para. 5 of the reamended defence are irrelevant to the specific charges relied upon.

The rule was also applied by the Court of Appeal of Singapore in *Aaron & Ors v. Cheong Yip Seng & Ors* [1996] 1 SLR 623.

In the present application the main issue for determination is whether the words complained of are capable of bearing a general charge of dishonesty as contended by the defendant.

There are five causes of action against the defendant pleaded in the re-amended statement of claim: first, at para. 8, publication of the police report to police officers on 19 April 1998; second, at para. 12, publication of the press release to journalists on 19 April 1998; third, at para. 16, publication to readers of the issue of the *Sarawak Tribune* newspaper for 20 April 1998 of an article entitled "businessman alleges CBT in Lingga's mosque donation"; fourth at para. 20, publication to readers of the issue of the *Sin Chew Jit Poh* newspaper for 20 April 1998 of an article entitled "Ting Pek Khing is accused of misappropriating two hundred thousand ringgit, Mid tycoon requests police to investigate"; and fifth, at para. 24, publication to readers of the issue of the *Miri Daily News* newspaper for 20 April 1998 of an article entitled "managing director of a timber concession company lodges police report alleging that an entrepreneur has misappropriated a sum of two hundred thousand ringgit". The full texts of the police report, the press release and the three newspaper reports were reproduced in the respective paragraphs of the re-amended statement of claim. It was pleaded by the plaintiff in paras. 10, 14, 18, 22 and 27 of the re-amended statement of claim that the words complained of in their natural

and ordinary meaning, meant and/or were understood to mean that in June 1994 the plaintiff had dishonestly misappropriated for himself the sum of RM200,000 which the defendant had entrusted to him to pass on as a donation to Lingga mosque; and that the plaintiff was accordingly guilty of criminal breach of trust and/or the criminal offence of cheating. In other words the plaintiff is now bringing this action on the basis that the words complained of contain distinct and specific allegations that the plaintiff had dishonestly misappropriated the sum of RM200,000 for himself which the defendant had given him in a cheque form to pass on as a donation to Lingga mosque.

It is important to note that the question whether the charge which was first publicly made in the police report was specific or general is to be answered not by looking at the intention of the defendant when publishing those words or the manner in which the plaintiff pleaded his case but the test is what those words would have conveyed to reasonable readers. In *Hartt v. Newspaper Publishing Plc and Ors* (*Times*, 9 November 1989) the Court of Appeal held that in determining for the purposes of an action in defamation what meaning the allegedly defamatory words bore the approach adopted should be that of the hypothetical ordinary reader who was neither naive nor unduly suspicious, but who might read between the lines and be capable of loose thinking.

In support of his contention that those words convey specific charge the learned counsel for the plaintiff cited the case of *Bookbinder v. Tebbit* [1989] I WLR 640. In that case a local government authority under the leadership of Councillor Bookbinder of the Labour Party had spent £50,000 overprinting its writing paper with the words "support nuclear free zones". Mr. Tebbit of the conservative party made a speech at a political meeting in which he said (having in mind the "cold war" between the West and the Communist bloc which was then still current) that if this message had not reached the Russians then Councillor Bookbinder had lost the local authority £50,000. Bookbinder sued Tebbit for slander. Tebbit pleaded justification. He alleged that the authority under Bookbinder's leadership had wasted taxpayers' money overprinting the writing paper. He further alleged that the authority under bookbinder's leadership had wasted taxpayers' money in other ways which were set out in the particulars of justification. These further allegations were struck out by the Court of Appeal. At p. 647 of the report Ralph Gibson LJ said:.

> The question whether a particular charge of wrongdoing carries a general charge may depend upon the context in which the words appear. Where the words are published in written form the writing conveys the context and the defendant is normally entitled to insist that the jury see the whole of the context.

In *Williams v. Reason* [1988] 1 WLR 96 which was cited by the learned counsel for the defendant, the plaintiff, an amateur rugby player, sued the defendants alleging that they libelled him in the articles which alleged that the plaintiff had infringed his amateur status by writing a book for money, contrary to the regulations relating to amateurism. The defendants sought leave to adduce fresh evidence that the plaintiff had infringed his amateur status by regularly taking cash payments from Adidas for wearing those boots, which also contravened the said regulations.

The Court of Appeal allowed the appeal by the defendant and ordered a new trial and further gave leave to the defendant to amend the particulars of justification in their defence to plead the receipt of boot money. According to O'Connor LJ he was clear that this allegation could be raised in justification of the libels published by the defendants.

In *Prager v. Times Newspaper Ltd* [1988] 1 All ER 300 the defendants published an article which stated that the plaintiff, a well-known boxing promoter, had formed an alliance 'with Harold Smith, who was funding promotions with money stolen from the Wells Fargo Bank'. The plaintiff claimed that the article was defamatory of him because it suggested that the plaintiff had participated in, or connived at, the use of stolen money to fund boxing promotions. The defendant pleaded, *inter alia*, justification on the basis that Smith had been arrested and charged with the theft of $USD21.3 million before the fights promoted with the plaintiff took place. The defendant then amended their defence to allege (i) that in the course of his business association with Smith the plaintiff had acted disreputably by concealing from an official body and opposing boxers the true amount of purses being paid to the plaintiff's boxers and (ii) that the plaintiff should have been suspicious about the source of the money put up by Smith. At the trial of the action the amended defence was struck out by the trial judge on the application of the plaintiff. The defendant appealed against the judge's ruling, contending that it was open to them to plead a wider and different meaning of the words published, namely a general charge that the plaintiff had been incautious or had acted disreputably in his dealings with Smith.

The Court of Appeal held that the defendants were entitled to plead justification of any alternative meaning of the words published which those words were reasonably capable of bearing and which the jury, properly directed, might find to be the real meaning.

Relying on the decisions in *Williams v. Reasons (supra)* and *Prager v. Times Newspaper Ltd (supra)* the learned counsel for the defendant submits that in the present case the particulars relating to the "unreturned advances" and

"extortionate conduct" are relevant having regard to the meanings pleaded by the plaintiff and also the issue of excess premium brought up in the statement of claim.

It is to be noted that *Williams v. Reason* and *Pager v. Times Newspaper Ltd* were cited in *Bookbinder v. Tebbic* but the Court of Appeal in that case still struck out para. 6(7) to (19) of Mr. Tebbit's defence which referred to other items of council spending which he claimed were examples of the council under the plaintiff's leadership squandering public money.

Having carefully considered the texts of the police report, the press release and the three newspaper reports I agree with the learned counsel for the plaintiff that the words complained of describe one series of events and conclude with the assertion that, on account of these series of events the plaintiff is guilty of one offence of dishonesty. Only one alleged transaction was described *ie*, the misappropriation of the defendant's RM200,000 donation for Lingga mosque by the plaintiff. The matters related to the "unreturned advances" and "extortionate conduct" were not mentioned in the police report, the press release and the three newspaper report. As rightly pointed out by the learned counsel for the plaintiff that it is even clearer in this case than in *Bookbinder v. Tebbie* that the words complained of in the present case conveyed a specific charge. Under the circumstances it is my judgment that the words complained of merely impute a specific charge of dishonesty as claimed by the plaintiff. There is no possibility that a reasonable reader might conclude that those words convey a general charge of dishonesty against the plaintiff. Accordingly the defendant is not entitled to rely on general charges of wrongdoings or of any specific instance of wrongdoing which are not relevant or linked to the specific charges.

As regards the defendant's contention that the issue relating to the "extortionate conduct" was brought up by the plaintiff himself in his pleading namely para. 7 and 9 of the statement of claim and as such the defendant should be allowed to plead the particulars relating to the "unreturned advances" and "extortionate conduct", I am of the view that such argument is devoid of merits. It is to be noted that the statement of claim as originally pleaded attributed a variety of wide meanings to the words complained of as contained in the original para. 10. However by amendment that part of pleading had been removed and the plaintiff is now pleading a narrow meaning. A similar amendment had been made in *Bookbinder v. Tebbit (supra)* whereby Mr. Bookbinder had originally pleaded the wide meaning that the slander meant that he "had acted irresponsibly in causing large scale squandering of public funds". Later he amended it and substituted the narrower meaning that

he "had acted irresponsibly in squandering British Pound 50,000 of public money on printing statements supportive of unclear free zones on its stationery". Mr. Tebbit sought unsuccessfully to keep the particulars of other extravagant acts which had been let in by the original form of Mr. Bookbinder's pleading.

As regards para. 9 of the re-amended statement of claim which contains a plea of malice. I agree with the learned counsel for the plaintiff that it survives only because a reference back to it is made in para. 30(4), where malice is alleged as a factor aggravating the damages. It by no means follows that the plaintiff is inviting attention to his business dealings with the defendant.

In addition I have already ruled that the words complained of convey a specific charge and therefore the particulars relating to the "unreturned advances" and "extortionate conduct" are irrelevant. They remain irrelevant notwithstanding what was pleaded by the plaintiff in his statement of claim as the scope of the defence of justification in a defamation action did not depend on the way in which the plaintiff pleaded his case but on the meanings which the words published were capable of bearing. (See *Prager v. Times Newspaper Ltd [supra]*).

As regards the contention by the learned counsel for the defendant that the defendant is entitled to rely on the facts and matters pleaded under the "unreturned advances" and "extortionate conduct" to establish that the plaintiff's conduct set out therein and the propensity they reveal give rise to reasonable grounds for suspicion that he is guilty of dishonesty in relation to the donation of RM200,000 or that he is dishonest, unscrupulous and lacking in integrity I agree with the learned counsel for the plaintiff that there is no merit in that argument because under s. 5 of the Evidence Act 1950 those evidence are not relevant and should be excluded.

I also take note that the particulars pleaded in the relevant sub-paragraphs deal with matters which are already in controversy in four separate suits in the High Court between the defendant or his company Interhill Enterprise and the plaintiff.

The law concerning the exercise of powers under O. 18 r. 19 is clear and settled. The pleadings will only be struck out in plain and obvious cases. So long as the pleadings disclose some ground of action, the mere fact that the party is unlikely to succeed at the trial is no ground for striking out. In the present case the only issue for determination is whether the words complained of convey specific or general charge of dishonesty. The full text of the relevant police report, the press release and the three newspaper reports were reproduced in the statement of claim. There is no disagreement between the parties about

what the relevant principles of defamation law are. In my mind there is no doubt as what is to be imputed from the words complained of. In the circumstances I hold that this is a proper case for this court to exercise its powers under O. 18 r. 19 and O. 92 r. 4 of the RHC 1980 to strike out para. 8.1(c), para. 8.2(22A)(i), (ii) and (iii), paragraph 8.2(23)(a), (b), (c) and (d) under the sub-heading "unreturned advances" and para. 8.2(24) to (35) under the sub-heading "extortionate conduct" of the defendant's amended defence and counterclaim. I agree that they disclose no reasonable defence to the plaintiff's claim, are scandalous, frivolous and vexatious, are calculated to prejudice, embarrass and delay the fair trial of this action and are an abuse of the process of court. The plaintiff is therefore entitled to the order he is seeking under prayer 1 of his summons in chambers and I accordingly order that those paragraphs be struck out from the defendant's amended defence and counterclaim.

As regards costs of this application I take note that this is an application under O. 18 r. 19 of the RHC and there is no disagreement between the parties of the relevant general principles of defamation law applicable in this application as well as the circumstances under which this application was brought about. In exercise of my discretion I order that the costs of this application be paid by the defendant on the standard basis.